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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 519

WILLIAM A. S. DOUGLAS AND THE AMERICAN MERCURY, INC., PETITIONERS,

vs.

ELIJAH WILLIAM CUNNINGHAM AND POST PUBLISHING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 7, 1934.

CERTIORARI GRANTED DECEMBER 3, 1934.

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In United States District Court, District of Massachusetts

Equity Docket. No. 3703

William A. S. Douglas et al., Plaintiffs,

v.

Elijah William Cunningham et al., Defendants

Bill of Complaint—Filed August 2, 1932

[Memorandum.—Copy of bill of complaint is here omitted as an amended bill of complaint was subsequently filed and allowed and will be found attached to the motion for leave to amend bill and printed on pages 6 to 11 of this transcript of record. James S. Allen, Clerk.]

[fol. 2] In United States District Court

Answer of Post Publishing Company—Filed September 16, 1932

Now comes the Post Publishing Company summoned as defendant in the above-entitled cause and for answer says:

1. It admits that both defendants are inhabitants of the State of Massachusetts.

2. It is wholly ignorant of the allegations in paragraph No. 2 of the bill of complaint and leaves the plaintiff to make such proof thereof as he may be advised.

3. It is wholly ignorant of the allegations in paragraph No. 3 of the bill of complaint and leaves the plaintiff to make such proof thereof as he may be advised.

4. It is wholly ignorant of the allegations in paragraph No. 4 of the bill of complaint and leaves the plaintiff to make such proof thereof as he may be advised.

5. It is wholly ignorant of the allegations in paragraph No. 5 of the bill of complaint and leaves the plaintiff to make such proof thereof as he may be advised.

6. It is wholly ignorant of the allegations in paragraph No. 6 of the bill of complaint and leaves the plaintiff to make such proof thereof as he may be advised.

7. It is wholly ignorant of the allegations in paragraph No. 7 of the bill of complaint and leaves the plaintiff to make such proof thereof as he may be advised.

8. It is wholly ignorant of the allegations in paragraph No. 8 of the bill of complaint and leaves the plaintiff to make such proof thereof as he may be advised.

9. This defendant is wholly ignorant of the facts set forth in the ninth paragraph of the bill of complaint, but says that such facts are wholly scandalous, immaterial and irrelevant to the bill and moves as a part of its answer that the bill be dismissed as to paragraph No. 9.

10. This defendant admits that the article filed with the bill of complaint and referred to in said bill as "Exhibit C" was published by it in its Sunday edition of August 30, [fol. 3] 1931, but denies that the defendant Cunningham in any way infringed on any rights of the plaintiff or that he took the material in the story from the American Mercury, and says that said Cunningham obtained the facts in the article from a fellow newspaper man.

This defendant further says that the article was printed as a feature of the Sunday edition and this defendant has no intention of using said material again or in any other form, and hereby disclaims any intention to use said material on any other occasion or in any other form.

11. This defendant denies the fact set forth in paragraph No. 11 of the bill, but says that said paragraph is wholly scandalous, immaterial and irrelevant to the bill and moves as a part of its answer that the bill be dismissed as to paragraph No. 11.

By its Attorneys, Elder, Whitman, Weyburn & Crocker.

IN UNITED STATES DISTRICT COURT

ANSWER OF ELIJAH WILLIAM CUNNINGHAM—Filed September 16, 1932

Now comes this defendant and for answer says:

[MEMO.—Other parts of this answer identical with that of the Post Publishing Company are not here printed.]

* * * * * * *

10. This defendant admits that he prepared and gave to the defendant Post Publishing Company to be printed in its newspaper the article purporting to come from the newspaper Boston Sunday Post filed with the bill, but he denies that he had any knowledge of the article claimed to be written by the plaintiff either as published in the American Mercury or elsewhere, but says that while he was employed in the State of Oklahoma the facts set forth in the story were given to him by another newspaper man and he wrote the same in good faith, believing the statements therein contained were true.

* * * * * * *

By his Attorneys, Elder, Whitman, Weyburn & Crocker.

[fol. 4] IN UNITED STATES DISTRICT COURT

DEFENDANTS' MOTION TO DISMISS—Filed April 4, 1933

Now come both defendants and move that the bill be dismissed for the following reasons:

1. Because the bill shows upon its face that no copyright was ever obtained by the American Mercury.

2. Because it appears on the face of the bill that the plaintiff has no standing in this court.

These defendants further renew their motions embodied in their respective answers that paragraphs No. 9 and No. 11 of said bill be dismissed for the reasons set forth in paragraphs No. 9 and No. 11 of the answers.

By their Attorneys, Elder, Whitman, Weyburn & Crocker. Edmund A. Whitman, of Counsel.